

Memorandum 76-48

Subject: Study 77.20 - Nonprofit Corporations (Organization and Bylaws)

This memorandum presents several provisions relating to bylaws and their adoption not previously considered by the Commission. The only real innovation of the staff draft is the introduction of a definition of "bylaws" to mean articles or bylaws. This definition is consistent with the rule that the articles may state anything required or permitted to be stated in the bylaws, and will greatly simplify the drafting of the statute so that the phrase "articles or bylaws" will not have to be used throughout. It will also conform to the generally accepted practice of placing nearly all the details of the management of the corporation in the bylaws rather than in the articles, and will encourage "clean" articles.

The only issue the staff wishes to raise in this connection at this time is whether attached Section 5266 (bylaws made available to members) should apply to the articles. The staff believes the articles should be made available to the members in the same manner as the bylaws (notwithstanding the fact that the articles are available to the public in Sacramento). If the Commission determines that Section 5266 should not apply to articles, the "bylaw" definition will require further refinement.

Respectfully submitted,

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§ 5154.5. Bylaws

5154.5. "Bylaws" means articles or bylaws except in a provision relating to adoption, amendment, or repeal of bylaws.

Comment. Section 5154.5 is new. The articles may set forth any provision that is required or permitted to be stated in the bylaws. Section 5251 (permitted contents of articles).

§ 5260. Adoption of bylaws

5260. (a) Bylaws may be adopted, amended, or repealed by the members or by the board subject to the power of the members to amend or repeal the bylaws.

(b) Notwithstanding subdivision (a):

(1) The articles or bylaws may restrict or eliminate the power of the board to adopt, amend, or repeal any or all bylaws.

(2) The articles or bylaws may require the approval of members entitled to exercise a greater fraction or percentage of the vote than would otherwise be required under this division for the adoption, amendment, or repeal of bylaws.

Comment. Section 5260 continues the substance of former Section 9400. For a comparable provision, see Section 211 (General Corporation Law). For the vote required under subdivision (a), see Sections 5615, 5630 (members) and _____ (directors).

§ 5260.5. Contents of bylaws

5260.5. The bylaws may contain any provision, not in conflict with law or the articles for the management of the activities and for the

conduct of the affairs of the nonprofit corporation, including but not limited to any provision required or permitted by this article.

Comment. Section 5260.5 is the same in substance as the introductory portion of Section 212(b)(General Corporation Law). It is new to nonprofit corporation law. For provisions required or permitted in the bylaws by this article, see Sections 5261-5265.

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§ 5266

§ 5266. Bylaws made available to members

5266. (a) A nonprofit corporation shall keep at its principal executive office in this state, or if its principal executive office is not in this state, at its principal office in this state, the original or a copy of its bylaws as amended to date. The bylaws shall be open to inspection by the members at all reasonable times during office hours.

(b) If the principal executive office of the nonprofit corporation is outside this state and the nonprofit corporation has no office in this state, it shall upon the written request of any member furnish to the member a copy of the bylaws as amended to date.

Comment. Section 5266 is the same in substance as Section 213 (General Corporation Law). It supersedes former Section 9404, which provided only that a nonprofit corporation keep a record book of minutes at its principal office. Section 5266 applies to articles as well as bylaws. Section 154.5 ("bylaws" defined).

Note. The staff has not yet considered whether this section should be applied to foreign nonprofit corporations.

APPENDIX§ 9400. (repealed)

Comment. Subdivisions (a) and (b) of former Section 9400 are continued in Section 5260(a). Subdivision (c) is continued in Section 5311(c). The last paragraph of former Section 9400 is continued in Section 5260(b).

§ 9404. (repealed)

Comment. Former Section 9404 is superseded by Section 5266.